IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2280 OF 2006

St. Francis Industrial Training Institute & Ors. ..Petitioners.
Vs.
P. J. Jose & Ors. ..Respondents.

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Mr. S.C. Naidu with Mr. Majoj Gujar, Mr. N.P. Dalvi i/b M/s. C.R. Naidu & Co. for the Petitioners.
Mr. S.K. Shinde with Mr. T.G. Vartak for Respondent No.1.
Mr. S.M. Dandekar, AGP for the State.

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CORAM: DR. D.Y. CHANDRACHUD, J.

16th October, 2006.

ORAL JUDGMENT :

1. Rule, made returnable forthwith. Counsel appearing for the Respondents waive service. By consent and at the request of the learned counsel taken up for hearing and final disposal.

2. The issue which arises before the Court in these proceedings under Article 226 of the Constitution is whether an employee of an Industrial Training Institute can prefer an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to the Tribunal constituted thereunder. Under sub section (1) of Section 9 an

appeal can be filed before the Tribunal by “any employee in a private school”. An appeal lies against an order of dismissal, removal or termination, a reduction in rank or supersession while granting promotions. Therefore, unless a person is an employee of a private school, an appeal cannot be maintained before the Tribunal.

3. The expression “Private School” is defined by Section 2 (20) of the Act as follows :

> “2(20) 'Private School' means a recognized school established or administered by a Management other than the Government or a local authority.”

The definition postulates that in order to be a private school, the school has to be recognized. The expression “recognized” is defined by Section 2(21) as follows:

> “2(21) 'recognized' means recognized by the Director, the Divisional Board or the State Board or by any officer authorized by him or by any of such Boards.”

Consequently, the recognition which the Asct postulates is recognition by (i) the Director; (ii) the Divisional Board or (iii) the State Board. The expressions Director, Divisional Board and State

Board are defined by clauses (6), (6-A) and 25 of Section 2 as follows :

> “2(6) 'Director' means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government.”
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> “2(6-A) 'Divisional Board' means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965.”
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> “(25) 'State Board' means -
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> a) The Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;
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> b) The Board of Technical Examinations, Maharashtra State;
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> c) The Maharashtra State Board of Vocational Examinations or
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> d) The Art Examinations committee.”

Section 3(1) of the Act provides that the Act shall apply to all private schools in the State of Maharashtra whether receiving any grant in aid from the State Government or not. Hence, an educational institution would be governed by the Act only if and in so far as it meets the definition of the expression 'private school' in

Section 2(20). The definitions which have been adverted to herein above viz. those in clauses (20) and (21) of Section 2 together with those in clauses 6, 6(a) and 25 thereof, together with Section 3(1) would make it abundantly clear that a private school under the Act is an educational institution which is recognized by either of the following authorities viz :

> "a) The Director of Education, State of Maharashtra
>
> b) The Director of Technical Education, State of Maharashtra
>
> c) The Director of Vocational Education, State of Maharashtra
>
> d) The Director of Art, State of Maharashtra
>
> e) The Divisional Board established under the Maharashtra Secondary and Higher Secondary Board Act, 1965 or the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965
>
> f) The Board of Technical Examination, State of Maharashtra
>
> g) Maharashtra State Board of Vocational Examinations
>
> h) The Arts Examination Committee."

4. The expression “school” is defined in Clause (24) of Section 2 to mean a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or any part of such institution which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level. In order to attract the application of the Act, however, an institution must apart from being a school be a private school. A private school, to recapitulate, is a school which is recognized and which is established or administered by a management other than the government or local authority. The recognition of the institution has to be by one of the authorities spelt out in Section 2(21). Else such an institution would not be treated as being recognized for the purposes of the M.E.P.S. Act, 1977.

5. The issue which falls for determination in these proceedings arises in the background of an appeal that was filed by the First Respondent to the School Tribunal at Mumbai in order to challenge an order of termination dated 20th December, 2001

issued on the ground of a loss of confidence. The First Respondent was holding the post of an instructor in the mechanical section of the Petitioners. A charge sheet was issued to the First Respondent in a disciplinary proceeding. An enquiry committee was constituted and ultimately an order of termination came to be passed. The First Respondent moved the School Tribunal. The Petitioners questioned the jurisdiction of the Tribunal to entertain the appeal on the ground that as an industrial training institute, it was not a private school within the meaning of Section 2(20) of the Act, since it was not recognized either by the Director, the Divisional Board or the State Board as required by Section 2(21). The Tribunal turned down the submissions and by its order dated 21st April, 2005 directed the Petitioners to pay backwages from the date of the order of termination until the order of the Tribunal together with compensation of 12 months in lieu of reinstatement. While holding that the termination was not lawful the Tribunal held that the First Respondent had taken political support in order to pressurise the management and had utilized the electronic media to highlight his grievance. The Tribunal held that the relations between the parties being strained, an order of reinstatement would not facilitate the cause of education in the institution.

6. On behalf of the Petitioners it has been submitted that an industrial training institute does not fulfill the requirement of a private school in Section 2(20) of the Act. Besides referring to the statutory definitions to which a reference has already been made herein above, counsel appearing for the Petitioners relied on the affidavits filed on behalf of the State Government which support the contention of the Petitioners. Since the issue however relates to the jurisdiction of the Tribunal, it would not be appropriate for this Court to rest merely on the affidavits filed on behalf of the State since the question of jurisdiction would have to be determined with reference to the applicable statutory provisions. On the other hand, on behalf of the First Respondent while supporting the order of the Tribunal, learned counsel submitted that the management had instituted the enquiry under the M.E.P.S. Act, 1977 and had pursued the enquiry thereunder in which case it must be estopped from denying the applicability of the Act to the institution. These submissions now fall for determination.

7. Section 3(1) of the Act which governs the application of the Act specifically provides that the Act shall apply to all private

schools in the State of Maharashtra whether or not the school receives grant in aid from the State Government. In order to be a private school, the school must fulfill two requirements spelt out in Clause (20) of Section 2. Firstly, the school has to be recognized and secondly, it has to be established or administered by a management other than the government or local authority. In order to be a recognized school, the school must meet the requirements in Clause (21) of Section 2 which is recognition by the Director, the Divisional Board or the State Board or by an officer authorized by him or any of such Boards. In the present case, it is an admitted fact that the Petitioner which is an industrial training institute is not recognized either by the Divisional Board as defined in Clause 6 (a) of Section 2 or by the State Board as defined in Clause 25. The expression “Director” is defined by Clause (6) of Section 2 to mean that (i) the Director of Education ; (ii) the Director of Technical Education; (iii) the Director of Vocational Education and Training and (iv) the Director of Art appointed as such by the State Government. The First Petitioner was established in 1964 with the object to establish, maintain and develop an industrial training institute at Borivli (West). An application for affiliation was made to the National Council for Training in Vocational Trades (NCVT).

Affiliation was granted in 1965 by the NCVT for the trades of turner and motor mechanics and in 1967 for the trades of fitter, carpenter, hand composition, proof reading, printing machine operator and electrician. In 1976, the NCVT granted affiliation for the trade of mechanical draughtman. The Director of Technical Education by his letters dated 28th December, 1965, 20th September, 1967 and 7th May, 1976 communicated affiliation thus granted by the Government of India and the National Council for Training in Vocational Trades. On 4th December, 2001 the Deputy Director, Vocational Education and Training wrote to the Petitioner stating that the National Council for Vocational Training, New Delhi had granted affiliation to the First Petitioner albeit through the office of the Directorate for Vocational Education and Training. This letter was in the context of the issue as to whether the permission of the State Directorate was required for the appointment of the staff of the institute, the view of the State being that no such permission was necessary.

8. In the proceedings which were instituted by the First Respondent before the School Tribunal an affidavit in reply was filed by the District Vocational Education and Training Officer on

behalf of the Director (Training), Directorate of Vocational Education and Training of the State of Maharashtra. The affidavit in reply stated that the Director (Training), Vocational Education and Training Directorate only grants a prior permission on behalf of the Government of Maharashtra for commencing vocational courses in private unaided industrial training centers in the State. However, after the scrutiny is carried out of the course of studies, permanent affiliation (recognition) is granted by the Director General, Employment and Training. Consequently, the view of the State Directorate was that the provisions of the M.E.P.S. Act and the rules framed thereunder would not apply. It may also be noted that an affidavit was filed on behalf of the Director of Technical Education noting the bifurcation of that Directorate upon which Vocational education ceased to fall within the purview of the Directorate of Technical Education. The subject thereafter came under the Director of Vocational Education and Training.

9. A scheme for the establishment and regulation of Industrial Training Institutes in the country was notified by the Government of India, Ministry of Labour through the Directorate General of Employment and Training. The text of the training

manual brought out by the Government of India contains comprehensive provisions relating to the organization of Industrial Training Institutes, the administration of such institutes, appointment of staff and fulfillment of prescribed standards and other parameters. The background in which the National Council for Vocational Training came to be constituted is set out therein as follows :

> "In pursuance of the recommendation of the All India Council for Technical Education, the Government of India in the Ministry of Labour Resolution No. RTA-428 (5)/ dated the 22nd May, 1951, appointed a committee called the National Trade Certification Investigation Committee with instructions to prepare a scheme for the establishment of an All India Trades Board which would award certificates of proficiency to craftsmen in the various engineering and building trades. The report of this committee as also the recommendation of the Training and Employment Services Organisation Committee (known as the Shiva Rao Committee) have been considered by the Government of India. The government agreed with both the committees that there is need for setting up a central agency for co-ordinating the training programmes in the country bringing about uniformity of standards and awarding certificates of proficiency in craftsmanship on an All-India basis. Such a step is the interest of both the industry and the workers in as much as it ensures that the holders of National Certificates possess a minimum recognised degree of skill. In addition, it facilitates mobility of tradesmen and their employment.
>
> The Government of India have also decided to transfer the administration of the training organisation under the Directorate General of Resettlement and

> Employment to the control of the State Government concerned, retaining for themselves the functions of co-ordinating craftsmen training and laying down the training policy. This decision has further accentuated the need for central agency for assisting or advising the Central Government in the discharge of their responsibilities regarding craftsmen training. It has accordingly been decided in consultation with the State governments and other concerned parties, to set up a National Council for Vocational Training. Accordingly with a view to ensure and maintain uniformity in the standards of training all over the Country, the National Council for Vocational Training, an advisory body, was set up by the Government of India in the year 1956. The Council has been entrusted with the responsibilities of prescribing standards and curricula for Craftsmen Training, advising the Government of India on the overall policy and programmes, conducting All India Trade Tests and awarding National Trade Certificates. The National Council is chaired by the Minister of Labour, with members representing Central and State Government departments, employers' and workers' organisations, professional and learned bodies, All India Council for Technical Education, scheduled castes and scheduled tribes, All India Women's Organisation, etc. The State Council for Vocational Training at the state level and the Trade Committees have been established to assist the National Council."

The headquarters of the National Council are in New Delhi and the functions of the council are as follows :

> "(d) FUNCTIONS : The functions of the Council shall be to
>
> 1. establish and award National Trade Certificates in engineering, building, textile and leather trades and such other trades as may be brought within its scope by the Government of India;

2. prescribe standards in respect of syllabi, equipment, scale of accommodation, duration of courses and methods of training;

3. arrange trade tests in various trade courses and lay down standards of proficiency required for a pass in the examination leading to the award of national Trade Certificate;

4. arrange for ad-hoc or periodical inspections of training institutions in the country to ensure that the standards prescribed by the council are being followed;

5. recognise training institutions run by government or by private agencies for purposes of the grant of National Trade Certificates and lay down conditions for such recognition;

6. co-opt, if necessary, any person or persons to advise the council in connection with its work;

7. prescribe qualification for the technical staff of training institutions;

8. prescribe the standards and conditions of eligibility for the award of National Trade Certificates;

9. generally control the conditions for the award of National Trade Certificates;

10. recommend the provision of additional training facilities wherever necessary and render such assistance in the setting up of additional training institutions or in the organisation of additional training programmes as may be possible;

11. advise the Central government regarding distribution to State governments of the contribution of the Government of India towards expenditure on the Craftsmen Training Scheme;

12.perform such other function as may be entrusted to it by the Government of India;

13.perform such functions as are assigned by or under the Apprentices Act, 1961.” (emphasis supplied)

Recognition of training institutions is expressly one of the prescribed functions of the National Council for Vocational Training, New Delhi.

10. The Council is constituted by the Government of India and inter alia consists of a representative from each State Government and the Union Territories amongst other members. The inspection of training institutes is provided for in the following terms :

> “(j) INSPECTION OF TRAINING INSTITUTES : The Council's functions in regard to inspection of Training Institutes shall be exercised through the Directorate of Training. Training institutions which have already been recognised or which have applied for recognition by the National Council shall afford all facilities for inspection to the staff of the Directorate of Training or any member of the National Council examining body in a state or of any committee appointed by the National Council.”

11. Each State has a State Council for vocational training which functions as a state agency to advise the State Government in carrying out the training policy laid down by the National Council

and to co-ordinate the Vocational Training Programme throughout the State. The functions of the State Council are as follows :

> "(b) FUNCTIONS : The functions of the State Council are:
>
> 1. to carry out the policy of the National Council with regard to the award of National Trade Certificates in engineering and non engineering trades as may be brought within its scope by the Central or State government;
>
> 2. to implement the decision and carry out the policy laid down by the National Council in respect of syllabi, equipment, scale of accommodation, duration of courses and method of training;
>
> 3. to establish State Board of Examination in vocational trades;
>
> 4. to arrange for ad-hoc or periodical inspection of the training institutes/ centres in the State and ensure that the standards prescribed by the National Council are being followed;
>
> 5. to co-opt, if necessary, any person or persons to advise the State Council in connection with its work;
>
> 6. to ensure that the staff is employed according to the qualifications prescribed by the National Council and relax qualifications in special circumstances to be recorded, for trades where such staff is not easily available;
>
> 7. to ensure that the examinations are conducted by the State Board of Examinations according to the standards and the manner prescribed by the National Council;
>
> 8. to counter-sign and issue the National Trade

Certificates to successful candidates;

9. to recommend the provision of additional training facilities, wherever necessary, and render such assistance in the setting up of additional training programmes as may be necessary;

10. to advise the State Government regarding expenditure on different training schemes; and

11. to perform such other functions as may be entrusted to it by the State Government."

12. The procedure for affiliation of training institutes to the NCVT is laid down in Appendix XIX. The procedure envisages that the State Director invites applications for seeking permission to start training on the pattern of the Craftsman Training Scheme. A standing committee is constituted for inspecting the applicant institute. The standing committee after verifying available infrastructure facilities submits its recommendations. The State Director forwards the inspection report to the NCVT at Delhi. The inspection report may be scrutinized by the Directorate General of Employment and Training. Final orders conveying the grant of permanent affiliation are communicated after obtaining the approval from a sub committee of NCVT dealing with affiliation. A procedure has been prescribed in Appendix XIX for seeking permanent affiliation to the NCVT. At this stage, it would suffice to

note that the power to grant permanent affiliation is vested with the National Council for Vocational Training. The aforesaid provisions thus abundantly make it clear that the power to grant recognition to an industrial training institute is vested in the National Council for Vocational Training, New Delhi. In fact one of the functions specifically assigned to the National Council is to recognise institutions run by government or by private agencies for the grant of National Trade Certificates and prescribe the conditions for such recognition. The State Council acts as an implementing agency for carrying out the policy of the National Council. The grant of recognition is a function of the National Council. The State Director of Vocational Education and Training was therefore correct in his assessment of the legal position. An industrial training institute is not recognized by the Director of Technical Education or by the Director of Vocational Education and Training. That being the position, the First Petitioner cannot be regarded as a private school within the meaning of Section 2(20) because it was not recognized by any of the authorities as stipulated in Section 2(21) of the Act.

13. The relevant provisions of the M.E.P.S. Act 1977 came up for consideration of a Full Bench of this Court in **Suryakant**

Sheshrao Panchal v. Vasantrao Naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal[1] where it was held that an ashram school which has classes below the seventh standard does not require the recognition of the Maharashtra Board of Higher Secondary Education and its employees will not be entitled to avail of a remedy of an appeal before the School Tribunal under Section 9 of the Act. The Court held that when the Act has confined the remedy of an appeal to an employee of a private school, it was not open to the State to amend the statutory provisions by administrative instructions in the form of a code of instruction :

> "We now come to the Ashram Schools Code as formulated by the State Government in the year 2001. It is well established in law that the provisions of a statute cannot be amended by administrative orders, circulars or Codes. The provisions of section 9 of the M. E. P. S. Act state that notwithstanding anything contained in any other law or contract for the time being in force any employee in a private school who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the order passed by the management or who is superseded by the management while making an appointment to any post by promotion shall have a right of an appeal and may appeal against any such order or suppression to the Tribunal constituted under section 8 of the said Act. When a statute has provided a remedy to an employee in a private school, such a remedy cannot be extended to an employee in any school and the meaning of the terms 'employee' and

1 2002(5) Bom. C.R. 95.

'private school' cannot be altered or amended by formulating a Code."

14. On behalf of the First Respondent, however, it was sought to be urged that the enquiry was initiated under the provisions of the M.E.P.S. Act, 1977 and the rules framed thereunder and the Petitioners must therefore be estopped from denying the application of the Act. The submission cannot be accepted for the simple reason that there can neither be an estoppel against statute nor can jurisdiction upon the Tribunal be confirmed by consent. The statute applies to private schools and unless the institution fulfills the definition of the expression private school, the Act does not apply. The right to appeal is conferred by Section 9 and unless a person is an employee of a private school the Tribunal would have no jurisdiction.

15. In **Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh**[2] the Supreme Court held that the jurisdiction of the Industrial Court to make an award under the Industrial Disputes Act, 1947 is dependent on whether the employee concerned is a workman or not within the meaning of Section 2(s). When such an issue is

2 (2005) 3 SCC 232.

raised, the findings of the Labour Court are subject to judicial review since the issue raises a question of the jurisdiction of the Labour Court. The principles of res judicata, estoppel or waiver were held to be procedural principles which would not preclude a decision on the jurisdictional question. The Supreme Court held as follows :

> "27. The principle of res judicata belongs to the domain of procedure. When the decision relates to the jurisdiction of a court to try an earlier proceeding, the principle of res judicata would not come into play. (See Mathura Prasad Bajoo Jaiswal – ((1970) 1 SCC 613).
>
> 28. An identical question came up for consideration before this Court in Ashok Leyland Ltd. v. State of T.N. ((2004) 3 SCC 1) wherein it was observed : SCC p. 44, para 118)
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> "118. The principle of res judicata is a procedural provision. A jurisdictional question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata."

16. The Tribunal in the present case noted that the First Petitioner was recognized by the NCVT. The Tribunal was, however, of the view that since the institution is under the control of the Director of Vocational Education and Training for the purpose

of training and conduct of examinations and since the Directorate had granted an initial permission to run the institute, it must be held to be recognized by the Director. The Tribunal was manifestly in error. In order to be a private school, the institution has to be recognized by one of the authorities provided for in Section 2(21). Plainly in the present case, as an industrial training institute, the First Petitioner is not recognized by the Director of Vocational Education and Training or by any of the authorities spelt out in Section 2(21).

17. In the circumstances, the Tribunal has erred in assuming jurisdiction in a case where it had no jurisdiction to adjudicate under Section 9(1) of the M.E.P.S. Act 1977. The Judgment of the Tribunal dated 21st April, 2006 (Exh. M) is accordingly quashed and set aside. However, while doing so it is clarified that this shall not preclude the First Respondent from seeking such remedies as are available in law in order to challenge the order of termination. The Petition is allowed in these terms. No order as to costs.